

III

RELIGION AND SOCIAL CONTROL IN THE SOCIETY OF TODAY

HITHERTO in the development of social control, and of that highly specialized form of social control in civilized society which we call law, there have been three guiding influences, religion, philosophy, and the analogy of physical nature. We have seen that in the emergence of ordered society, of a legal order, from the chaos of the earlier Middle Ages, religion was the guiding and organizing agency of social control. We have seen how after the Reformation religion guided what might else have been a recurrence of anarchy in England and gave direction and stability to the making of the common law of the English-speaking world in the seventeenth and eighteenth centuries. If there were time, one might show also how the religious revival of the counter-Reformation on the Continent had a like effect upon the beginnings of modern juristic theory of that part of the world as it developed down to the nineteenth century, and especially upon the beginnings of international law. Today, in what seems to be the beginning of another era in legal development, and, as one must hope, a new era of expansion and liberalization, we lack each of the guiding and steadying forces which had operated at turning points in legal history in the past. Yet the need of such forces is manifest. There is restiveness under law in every part of the world and everywhere we may see the spread of ideas of social control by force, and resting solely on force, as the inevitable reality.

Something of what religion has done has been told. As to philosophy, we need only refer to the Stoic philosophy in the development of the Roman law from the first to the middle of the third century, to scholastic philosophy from the twelfth to the fifteenth century, to rationalist philosophy in the seventeenth and eighteenth centuries, to metaphysical and later positivist philosophy in connection with historical jurisprudence, and utilitarianism in connection with analytical jurisprudence in the nineteenth century. Each of these philosophies in its turn helped in reasoned development of experience crystallized by authority.

If philosophy from the twelfth to the sixteenth century, and largely to the nineteenth century, worked as the handmaid of religion, the analogy of physical nature gave aid and comfort to philosophy of social control down to the present century. From the time when Greek philosophers, seeking a way out from the strife of parties in the Greek city-state, from the perennial struggle of oligarchy and democracy, began to inquire as to an assured basis of social control, resting on reason rather than on force, men have turned to the phenomena of physical nature for analogies and ideals. They have found in the periodical return of the seasons, the phases of the moon, the regular succession of day and night, and later, as knowledge grew, in the movements of the planets, a model of orderly, predictable phenomena, in contrast with the wilfulness, caprice, and instability of human conduct, especially as such conduct was manifest in political activity in the Greek city-state. A moral and a legal order were conceived of on this model, so as to bring about a like predictability in conduct and uniformity in the exercise of force by those who controlled politically organized society. The Greeks were travelers and traders. Going from city to city and from land to land, they saw that the uniformity and

regularity and predictability of physical nature were by no means reflected in the phenomena of human nature. Where the one seemed to follow a plan, the other varied from action to action and situation to situation. Moreover, the means by which men sought to control or order conduct and put restraints upon the wilfulness of human nature were seen to vary with men and places and times, whereas physical phenomena remained constant. As it was put in a dialogue attributed to Plato, laws and customs and political arrangements differ from land to land, from city to city in the same land, and from time to time in the same city. But fire burns and water flows, and the sun rises and sets in Persia and Greece and Carthage with the same regularity and predictability.

As men thought about these things, an ideal supernatural order, reflected in the order of physical nature seemed to be reflected also in the moral order. There was an obvious contrast between the conduct of the upright, God-fearing man, who conformed his life to the pattern of the divine organization of external nature, and the irregular, inconsistent, unpredictable conduct of the unrighteous man. We say of the one that he is reliable and trustworthy. We know today what he will do and what he will not do tomorrow. We can trust him to be constant and his conduct to be predictable. We say of the other that he is unprincipled, unreliable, untrustworthy. He does not mould his conduct to principles according to the divine plan. He may or may not be constant in domestic or political or business relations. Thus there seemed to be plan and system in the moral order no less than in the natural order. What social control by the force of politically organized society sought to bring about in the conduct of the citizen, the moral order brought about in the good man. Moreover, the control in each case seemed com-

parable to that control of the physical universe which was apparent in the everyday phenomena of the heavenly bodies. The moral order no less than the physical order pointed to principles of regularity and reasoned systematization of conduct which therefore ought to govern the political and the legal orders. Thus philosophers got the conception of a natural law, that is, an ideal social control conforming to the ideal regularity and uniformity and predictability which characterize physical nature, and of a moral order likewise thought of on the analogy of physical nature. The order of nature and the moral order pointed out the ideal to which the conduct of the citizen and the operations of those who wielded the authority of the city-state sought to conform.

With the growth of knowledge, mathematics seemed to confirm what philosophers had worked out on the basis of physics. In mathematics there was an orderly sequence of propositions from axioms and postulates. There was a control of the concrete through formulas given by reasoning about the abstract. The analogy suggested that what was applicable to measurement of physical magnitudes and distances and spaces was also applicable to the measurement of conduct. Besides, the mathematical formula was capable of logical development, making it applicable to new states of fact. By analogy it seemed that a system of moral legal precepts might be worked out as deductions from postulated ideal principles of universal application, and that the deduced precepts could be systematized in a body of logically interdependent propositions after the pattern of geometry. Thus Greek philosophical speculation about social control gave us the idea of natural law and of a systematic positive law developed logically from natural law. These ideas governed in the science of politics and in the science of law for centuries and have by no means lost their hold even today.

Both of these analogies, the analogy of the predictable operations of physical nature and the analogy of axioms and postulates developed after the manner of geometry, have done great things in the evolution of politics and law. Natural law had a great part in the creation of the classical Roman law, in the founding of international law, in the general liberalizing of the strict law of the Middle Ages in the seventeenth and eighteenth centuries, and in the shaping of an American common law in the nineteenth century. In politics it gave us the Declaration of Independence, the French Declaration of the Rights of Man, and the general theory of our Bills of Rights and of the decisions applying them. Also the idea of a logically systematized body of legal precepts was the basis of the analytical political theory and analytical jurisprudence which prevailed in the English-speaking world in the nineteenth century and is still strong everywhere.

Thus during the whole development of modern law an ideal plan of universal validity, discovered by reason and declared in its details by authority, was the starting point of political and juristic theory. Resting at first on theology, it was later bolstered up by philosophy. When the Protestant jurists of the Reformation asserted it could stand upon its own feet as a philosophical doctrine, none the less theology was regularly invoked as a support for two centuries to come. When the theological prop was given up in the last century, philosophy still found support in the positivist doctrine of reality in laws of external nature discovered by observation and verified by further observation.

At the end of the eighteenth century Kant undermined the rationalist natural law and set up a metaphysical politics and jurisprudence in its stead. The conscious ego was taken to be an unchallengeable starting point and liberty was a corollary.

Natural rights were deduced from liberty and natural law was an ideal body of precepts securing natural rights. Natural rights were taken to be the foundation of the science of politics and of the science of law. But today psychology has challenged the unchallengeable and undermined both metaphysics and reason. The theological foundation was given up long ago. The philosophical foundation, as it stood in the nineteenth century, has been shaken. Politics and jurisprudence have been driven to find new foundations or to rest insecurely upon no foundation.

There have always been philosophers to assert that there is nothing more than power and force behind social control by politically organized society. It was a stock doctrine of the Sophists that the just was such only by convention and enactment. There was no ideal behind a legal precept which it sought to declare. What men had taken to be an ideal behind it was a result of the existence of the precept by convention or enactment. A Marxian economic determinist or a skeptical realist of today might have said what is attributed to Thrasymachus—that “the just is nothing else than the self interest of the stronger,” meaning by “the stronger” the ruling person or persons in the city-state, and that as the shepherd exploits the sheep, so the ruler exploits the ruled for his own advantage. Such ideas, however, did not get much hold until the present century. Until recently natural law, Roman law, theological ethics, and metaphysical natural rights were thoroughly intrenched.

What I have been in the habit of calling “give-it-up philosophies,” widely taught today, have joined with attempts to make over the social sciences to the pattern of the physical sciences, and, with a changed conception of physics, to put the social sciences wholly at large.

Elimination of the idea of “ought” from jurisprudence and

politics got much of its impetus from economic determinism. When Marx announced his economic interpretation of history in 1859, history was thought of as a record of the unfolding of an idea in human experience. The idea had been assumed to be an ethical or a political idea. Marx argued that it was an economic idea, an idea of satisfying material wants. Coming into vogue at the end of the nineteenth century, this interpretation, as an interpretation of legal history, spread to the science of law in the present century and is now active in all the social sciences. Since the World War it has combined with Freudian psychology and with relativism to form a school of realists, as they call themselves, who are skeptical of everything except their own skepticism and the economic interpretation. Marx's economic interpretation is applied to every item of social control and every problem of politics and jurisprudence. Thus the idea of "ought" as an ideal unfolding or realizing itself in the historical development of legal and political institutions is eliminated. In the meantime Freud's psychology, with its doctrine of the wish as the determinant of action, eliminated reason as the means of ascertaining the content of "ought." The fashionable doctrine of the moment is that what one wishes determines his view of what ought to be and what he wishes is determined by the self-interest of the social and economic class in which he finds himself.

Neo-Kantian relativism, which for a generation has been the prevailing political and legal philosophy in Continental Europe and has recently been acquiring a foothold in England, reinforces the tendencies that come from Marx and from Freud. Our fundamental problem in politics, in jurisprudence, and in ethics is to find and apply a measure of values. In jurisprudence we seek a measure of values by which to know what claims or demands are to be recognized,

within what limits effect ought to be given to them when recognized, and how to secure them within the determined limits consistently with the securing of other recognized and delimited interests. Neo-Kantian relativism tells us that our quest of such a measure of values is futile. We can never find one upon which we can rely. Judgments of value are of necessity relative and cannot be proved. Moreover, it teaches that the relation of law and morals is one of conflicts and irreducible antinomies. Three ideas, justice, that is the ideal relation among men, morals, that is, the ideal man, and security, that is the upholding of a legal and political order, contradict each other. They cannot be reconciled and no one of them can be proved to have more value than another. There is no way of arriving at a satisfactory answer to the question, What gives binding force to the law? What then is left? The religious foundation was rejected long ago. Philosophy gives up. Perhaps we can go back to the method of the first Greek philosophers and take our stand upon physics?

Nothing has been so upsetting to political and juristic thinking as the rise of the idea of contingency in physics. The idea of law had been fashioned to one of inevitable sequence of cause and effect and inevitable conformity to a fixed plan in all the operations of physical nature. The physicist of the past rejected chance as the jurist of the past rejected caprice and unreasoned exercise of force. Now that physicists talk of chance and of jumps and breaks in natural phenomena, instead of the orderly sequence of cause and effect and the inexorably operating laws of nature, which had been assumed in nineteenth-century physics, the effect upon the social sciences has been bewildering, if not destructive. There seems to be nothing left but force. We start with a politically organized society as something given us. Here, at any rate, is a starting point we may accept because it is

existent, and in that sense is real. One who finds himself starting from this actually existing phenomenon of a functioning political organization of society, will today call himself a realist and dub those of us who can see no reality in his conception of laws as mere threats of force, superstitious adherents of discarded mythology. He proclaims as reality that there is nothing more to politics or jurisprudence than force and threats. To use a fashionable phrase of the time, force and threats are "brute facts," since to our realists brutality is a measure of actuality and a voucher of the real.

Law had been something restraining force and constraining application of it in an orderly, reasoned fashion toward ends of civilization. Now it is taken to be simply the application of force toward personal ends or ends of a dominant social class. There is no need of bothering ourselves about such academic and unprofitable questions as whether law derives its binding force from consent or from being deducible directly from justice. The argument for one is no better than that for the other, and neither can be proved as against an argument that law has binding force because it is commanded by a force imposing itself upon all other forces. Law is whatever is done officially. When we look at the phenomena of social and political life objectively, with no attempt at impossible valuing, we see struggle of power with power and exploitation of those with less power by those with more. As a process, law is whatever officials do. As something in the books, it is a body of threats to be enforced or not so far as those who wield the force of politically organized society are inclined to enforce them.

Whether or not reality is to be found in such teachings, a very real result of them is to be seen in a revival of absolutism throughout the world. We have seen three great European powers turn from representative parliamentary institu-

tions to avowed dictatorships and the polity of more than one country, which in form hews to parliamentary rule, take on the substance of personal rule above and behind it. The books on government today are full of theories which, when carried out, lead to organization of society in an omnicompetent state in which the individual man is submerged. So, too, in juristic theory, ideas of liberty and balance and rights are rejected. The most widely known teacher, with the largest following on the Continent, while free to teach there, taught an absolutist theory of law on a basis of philosophical relativism. In England, where the doctrine of the supremacy of the law originated, a professor is now teaching that the law which recognized private rights and guaranteed individual liberties is being swallowed up by a law which knows them not, and that the old law of England, which taught that the King was to rule under God and the law, must give way to a new type of law which subordinates individual rights and liberties to the claims of officials.

Not the least striking effect of recent modes of thought in action at the moment may be seen in international relations and the breakdown of international law. Here we are certainly, as things are today, in the realm of "brute fact." Political phenomenalism holds that there is nothing beyond or behind the phenomena of government. They are all that we have to do with. There is nothing more to them than their own phenomenality. What governments do, whether at home or abroad, is a matter of items of behavior which are all equally significant and equally insignificant. Each item is valid in and of itself as a phenomenon. Law in any other sense than the sum of what is done officially is futile because it seeks to systematize and to value the items of governmental action which are valid and self-sufficient without regard to any system, and no objective valuing is pos-

sible. Whatever those who wield the power of politically organized society succeed in doing is its own justification. It is a self-sufficient phenomenon.

It is not hard to see how such an attitude toward law and government grows out of the attempt of this time to make every branch of learning a science to the pattern of the physical sciences. At one time every branch of learning sought to be a philosophy. To Descartes and Newton physics was natural philosophy. Psychology not long ago was mental philosophy and ethics was moral philosophy. To Lord Brougham a century ago what we now speak of as the science of government was political philosophy. When Austin wrote a book on analytical jurisprudence from which he rigidly excluded all ideal element, he called it the philosophy of law. But fashions change, and so much have our imaginations been taken captive by the great achievements of mechanical invention on the basis of physical sciences in the last generation, that we are now as eager to call everything a science as we were formerly to call everything a philosophy. Nor is it a mere matter of a name. The urge to make everything that is called a science conform in its method to experimental physical science has had the effect of eliminating from the social sciences their fundamental problem. The physical sciences, we may admit, have for their function to discover and explain what is. The social sciences, on the other hand, have for their function to discover what ought to be and how to bring it about. If newly observed phenomena do not accord with the physicist's hypothesis, he must reject the hypothesis and frame a new one. It is out of the question to ascribe praise or blame to the phenomena of physical nature. We must accept them as they happen. We might feel that the revolution of the earth round the sun could be better arranged, and the phases of

the moon better adjusted to that revolution, if we could have months of exactly four weeks of seven days each and exactly twelve such months in a year. But we achieve nothing by criticizing the physical make-up of the universe on that basis. It does not follow, however, that all criticism of the phenomena of human behavior is futile. We hear frequently that all value judgments are subjective, whereas science is objective. Hence, it is argued, we must accept phenomena of every sort as they come and not indulge in unscientific value judgments. But such judgments are the business of the social sciences. If particular facts of human conduct do not accord with some formula of justice or politics or law, the difficulty may lie in those facts rather than in the formula. Conduct must be shaped to what ought to be, not formulas of what-ought-to-be shaped to facts of conduct which contravene the jural postulates of civilization. If what-ought-to-be has no place in the physical sciences, it has first place in the social sciences.

What does recent philosophy offer us in place of the regime of social control through the orderly application of the force of politically organized society, conforming to the jural postulates of the civilization of the time and place, under which we were brought up? In the last century we should have thought of philosophical anarchy, the doctrine that law and government are necessary evils, to be held down to the very minimum necessary to safeguard a few paramount social interests, and that for the rest we should leave everything to a regime of free contractual self-determination, leaving it to everyone and his neighbor at the crisis of controversy to determine freely by contract for what each should be liable. But there is nothing in the circumstances of life today to make it likely that such a regime of adjusting relations and ordering conduct is practicable. It presupposes that prom-

ises, because of an inherent morally binding force, will therefore enforce themselves. If there were nothing else to give us pause, the circumstance that the young realists of today pronounce a promise nothing more than a prediction of intention and ability to perform at maturity, indicates caution in accepting a substitute for the legal order built on a theory of the sanctity and inviolability of promises.

The substitute for the legal order chiefly urged today is administrative absolutism, the committing of the adjustment of relations and ordering of conduct to the unfettered discretion of administrative boards or bureaus or officials, tied down by no rules and subject to no review unless that of a superior in a bureaucratic hierarchy. Judges proceeding according to law by applying an authoritative technique to authoritative guides to decision are to be superseded by "decision-makers" trained in the "technicalities of factual problems." Thus there would be in each state a homicide commission composed of detectives from which there would be no appeal. The person who was pointed out by the collective hunch of these detectives as guilty would be executed then and there and that would be the end of the matter. In the same spirit it has been proposed that instead of the three departments of government established in all American constitutions since those first set up at the time of the Declaration of Independence, we should have four: the legislative, the judicial, the executive, and the administrative. In this polity the administrative department is to be independent of and coordinate with the other three, but is to have a complete rule-making, executing, and adjudicating authority along with its guiding or directing jurisdiction. Under such a plan, the administrative department, with no check upon it and no review of its action, and with regulative power over every relation and every activity, could exercise an

unrestrained will to power superseding every other agency of politically organized society. It is significant that ideas of this sort are being urged in all countries today.

Where do such ideas come from in a world in which the last of the Caesars had fallen and absolute rule had been supposed to be obsolete? The chief point of origin is Marx's doctrine of the disappearance of law. Marx considered that law was something necessitated by a regime of private property and consequent regime of acquisition by exchange and commerce, and that it had for its function to keep down one class in the interest of another, whose self-interest was identified by it with right and justice, and imposed upon the one by the superior social and economic power of the other. Hence, he argued, in a society without property, which therefore would be a classless society, there would be no need for law and it would disappear. Yet manifestly all the causes of controversy in the world are not economic. There are many serious wrongs inflicted every day which have no connection with property, and many causes of quarrel are not economic. But Marx's followers have thought these too simple to call for justice according to law and have thought a group of experts could be provided to settle such disputes summarily or on such investigations as seemed best to them, treating each case as unique and making no attempt to find or establish any rules or general principles. As the late economic-jurist adviser to the government of Soviet Russia put it, in the ideal society there will be no law, or rather only one rule of law, namely, that there are no laws, but only administrative ordinances and orders. So said Professor Pashukanis of Moscow at the height of Soviet trying-out of theoretical Marxism. But when later the government passed into a personal dictatorship and had a plan to carry out, the regime of administrative orders on no system proved inconvenient.

Then it was discovered that Professor Pashukanis had made a mistake of interpretation. There was a purge and the Professor is no longer with us. Perhaps if there had been law instead of only administrative orders he might have lost nothing more than his job.

Administrative absolutism assumes an ideal civil service, organized under an ideal superman chief administrator, with an ideal super-superman as leader of the people. There is nothing in human experience to lead us to suppose such a regime possible of realization. No autocrat or headman or leader of an absolute administrative bureaucracy in history ever proved equal to what administrative absolutism assumes in the way of *ex officio* omniscience and omnicompetence. What history does show us abundantly, however, is that whatever such a regime may lack in other respects, it is never lacking in will to power. Given power with no check upon it, a regime of that sort will not hesitate to use the power for its own sake. At any rate it will prove efficient in maintaining itself by force, and it will think of itself as a regime of force rather than as one of reason.

Of the several types of political and juristic thought which describe themselves as realist and lay claim to realism, the most significant are economic determinism, psychological realism, skeptical relativist realism, and phenomenalism. I have said something about each of these in another connection. Let us recall that economic determinism refers every item of the judicial and *a fortiori* of the administrative process to class self-interest of the dominant social and economic class, of which judge or court or official is but the mouth-piece. Psychological realism holds that in the nature of things it is impossible for a judge or court or tribunal to make an objective, impartial decision or to reach a decision to the measure of a predetermined legal precept. Inevitably the

decision will be the product of individual psychology and subconscious wishes or prejudices, more or less skilfully covered up, it may be, by specious legal reasoning. It denies the possibility of what we had believed we had been doing, since at least the time of Cicero, namely, control the action of those who decide controversies by the authority of politically organized society by requiring application of an authoritative technique to authoritative precepts as guides to a predictable result. It conceives that general propositions as grounds of decision are either delusion or wilful deception. Skeptical relativist realism combines economic determinism and psychological realism by a relativist doctrine that no one can ever demonstrate any measure of values or criterion of ought-to-be, since such things are only subjective mental creations. One man's is as good and as valid as another's and to appeal from one tribunal to another is only to substitute one arbitrary result for another no more and no less arbitrary. Hence it has been proposed that an honest statute as to homicide should read, "when a court . . . finds that one person has killed another person and believes that the killer deserves to be electrocuted, the court may order that he be electrocuted." But why trouble about a finding that the one killed the other? Why not let it read: "When the public safety commission arrives in any manner it pleases at the conclusion that some person should be electrocuted, it may make an order accordingly." That is the method of the purge under an omniscient leader and why stop short of it?

Lord Coke tells us that the Star Chamber "kept all England in quiet." The skeptical realists, with a surprising faith after so much refusal to admit what experience had seemed to show for centuries, look forward to a similar keeping of society in quiet by "men trained and qualified

in the efficient and wise administration of government affairs." Very likely they mean to substitute professors acting as administrative officials for lawyers acting as judges. If they do and they some day have their way, I venture to predict that the attempt to keep all America in quiet in that way will end as did the attempt to keep England in quiet by means of the Star Chamber. At any rate the skeptical realist is for out and out absolutism in decision and administration as the only possible method of adjusting relations and ordering conduct, which therefore we should honestly admit, and give over all hollow pretence of law and rights and constitutional guarantees and authoritative technique.

As to phenomenalism, it will be enough to describe briefly a recent book on ethics from the phenomenalist standpoint. The burden of the book is that the nineteenth-century ethics was "legalistic." It thought in terms of principles of morals and moral laws. There are no such things. We must divorce ethics completely from an idea of laws or rules, and, if we are to be scientific, we must give over all criticism in terms of good and bad. We have to do only with items of behavior. Conduct is made up of behavior phenomena, and these are to be studied simply as phenomena. Scientifically there is no such thing as "ought to happen." "Ought," we are told, is a word which belongs to individual systems of thought and has no absolute validity.

Such modes of thought are obviously adapted to autocracies and dictatorships. If an autocracy or a dictatorship can secure satisfaction of the material wants of enough of the population to keep it in power, it meets the requirements of relativist realism. Institutionalism would say that the polity of a given society is an institution and so must be accepted as the phenomenalist would accept a phenomenon or as the calendar maker must accept the phases of the

moon. So autocracy and dictatorship in their institutional capacity justify themselves. Moreover, the items of action of autocrats and dictators are behavior phenomena not to be tried by rules or laws of morals.

Autocrats and dictators cannot attend personally to all the details of government. They must carry on their rule through bureaus and boards and administrative agencies. Hence the idea of law is superseded by an idea of unchecked administration, and that idea is backed up by all the give-it-up philosophies of the time. Skeptical realism tells the administrative official that as a matter of psychology neither he nor anyone else can reach an objective determination. Skeptical relativism adds that value judgments are purely subjective, so the bureau official may legitimately put his own value on his individual hunch. What he does will be determined by his individual temperament and prejudices and surroundings. So there is no use in trying to guide administrative action by such illusory things as rules or principles of law or moral judgments, or anything but the will of his administrative superiors. Phenomenalism tells him that what a bureau or commission or administrative official does in any particular case is a phenomenon and must be treated as such. It stands independent of all other phenomena. Very likely he will understand institutionalism to tell him that each administrative bureau is an institution and as such justifies itself. What it does is for itself to judge of, and subjection of its action to judicial scrutiny is an impertinence standing in the way of efficiency. The effect of these modes of thought, which have become widespread in the teaching of politics and have been coming into law teaching, is to be seen in an increasing vogue of administrative absolutism in the English-speaking world of today.

In consequence a contest is going on between courts and

administrative bureaus wherever the English common law prevails. Two maxims which, as the lawyer sees it, are involved in the very idea of justice, are continually invoked by the courts. One is that no one is to be judge in his own case. The other is that both parties must be heard. The courts have steadfastly enforced these propositions against the tendency of bureaus and administrative boards to ignore both of them in the interest of efficiency. Such things, indeed, are defended by many and legislation is pressed to prevent correction of them by the courts. We must remember that for realist modes of thought there are no such things as rights and for administrative absolutism there is no such thing as law. There are only administrative orders, made for each case, treated as a unique case, independent of all others.

Much of the vogue of such teaching comes from the suggestion in the terms "realist" and "realism," which convey an impression of exclusive contact with the facts of the world as compared with ideals and idealistic theories which are in the clouds. But "real" and "realist" and "realism," as applied to the American juristic left, are a boast, not a description. The advocates of this self-styled realism are fond of applying to the doctrines they reject such epithets as superstition and myth and pious fraud, and some go so far as to pronounce the law a "racket" and the profession, trained in the tradition of search for principle and quest of patterns of objective decision, dishonest. They are not the first proponents of new theories, however, to claim a monopoly of truth and contact with reality. These things have been claimed in full and exclusive ownership by every new school of jurists which has arisen since the Middle Ages.

Legal realism so-called is realism in the artistic, not in a philosophical, sense. Like artistic realism it is a cult of the

ugly. The realist in art says the ugly exists in nature, hence it is not true to nature to paint the beautiful, as in classical art. Truth requires one to paint the ugly. Keats's lines:

Beauty is truth, truth beauty, that is all
You know and all you need to know

ignore that the ugly is true also. But it does not follow that we should say, ugliness is truth, truth ugliness, that is all. The ugly is real in the sense that the ugly exists. But it does not follow that the real is ugly. When we put it in that way, we put the ugly as the significant element in reality. The ugly exists therefore the ugly is significant, is not a necessary conclusion. That there are ugly features in social control by the force of politically organized society is no sudden discovery of the juristic realists. For twenty-three hundred years, since Greek philosophers began to think and write on the subject, men have been at work finding out how to control these ugly features and make the adjustment of human relations and ordering of human conduct by law an objective and reasoned process conforming to the postulates of civilized life. Long before them another great people had given us a religious literature in which the principles of the moral life had been made clear in their relation to the Eternal who makes for righteousness. This age is remarkable for its mechanical development. But it makes the mistake of supposing that mechanical development is self-sufficient. Our control over external nature which has harnessed its forces to man's use was made possible by the control of internal nature by religion and morals and law which had harnessed human nature to make it a servant of civilization. It is this control over internal nature which has made division of labor possible, which has made investigation and research and experiment possible, which has set men free to develop human powers to their highest unfolding. With-

out this control of internal nature the control of external nature is its own undoing, as we may see all about us in a regime of destructive activity that threatens return to the chaos and anarchy of the earlier Middle Ages.

Our social science should build on the achievements of social control, not on its failures; and the achievements are nothing less than the whole of civilization. We shall not make them greater by a give-it-up philosophy nor by rejecting the three agencies which have operated to bring about those achievements because they do not reach a hundred per cent efficiency. Unchecked power, even directed by good intentions, has been tried over and again in the history of mankind. But the skeptical realist, rejecting history, has developed a faith that a benevolent superman despot guided by professors will be able to do what Plato expected from the philosopher king.

At other crises in political and legal history law has been put in the path of progress by a religious revival which has made philosophy vital and morals a force for justice. If philosophy gives up and morals throughout the world are inert, may we expect law to develop unaided the conception of justice and adjust itself unaided to that conception, or must we pronounce all that has been gained in the control of human nature since the twelfth century a failure and resort to anarchy for a new start by way of absolute government? There is nothing in human experience to compel either conclusion. Our mechanical development, with a mouth speaking great things, has taken itself to be self-sufficient. We have deified it, forgetting the long development of morals and law upon a background of religion which went before it and upholds it. A religious revival such as that which built cathedrals and churches to the glory of God rather than as business undertakings over all Europe in the twelfth century and

after, such as in the seventeenth century sent companies of God-fearing people into the wilderness to found a new world on the basis of free worship of God and free exercise of their faculties as moral units before God—such a revival is due to rebuild a moral order, to put new life in philosophy, to make morals and philosophy live in the ordering of conduct and adjustment of relations, not by sheer force, but by force applied according to law.

ROSCOE POUND.